

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
PHILLIP KLEVMOEN ZONE CHANGE REQUEST  
ZONING MAP AMENDMENT REPORT (#FZC-11-04)  
OCTOBER 26, 2011**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Phillip Klevmoen for a zoning map amendment in the Evergreen Zoning District. The proposed amendment would change the zoning on portions of the subject property from 'R-1 Suburban Residential' to 'B-2 General Business'.

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on November 9, 2011 in the 2<sup>nd</sup> Floor Conference Room of the Earl Bennett Building located at 1035 1<sup>st</sup> Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed zoning map amendment at a date and time yet to be determined. Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Recorder's Office at 800 South Main Street in Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposal is not located within the advisory area of a Land Use Advisory Council.

**B. Planning Board**

This space will contain an update regarding the November 9, 2011 Flathead County Planning Board review of the proposal.

**C. Commission**

This space will contain an update regarding the Flathead County Commission review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Phillip Klevmoen  
P.O. Box 5119  
Whitefish, MT 59904

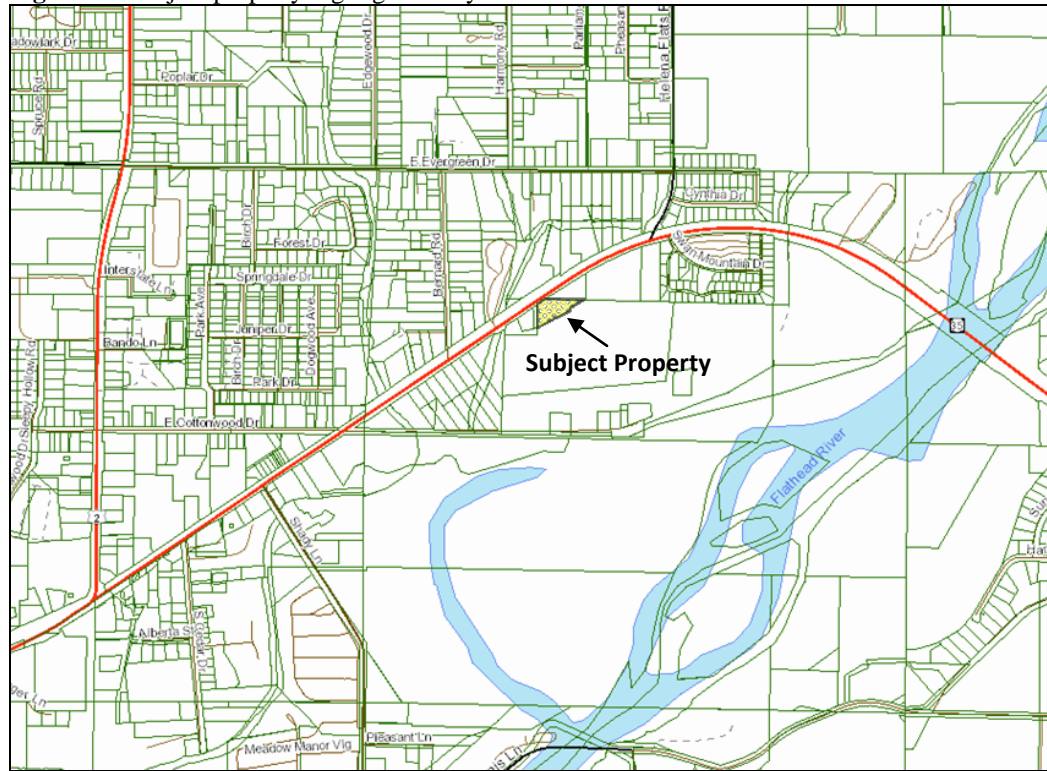
**ii. Technical Assistance**

Sands Surveying  
2 Village Loop  
Kalispell, Mt. 59901

## B. Subject Property Location and Legal Description

The subject property is located on the south side of Montana Highway 35 approximately one mile northeast of the intersection of Montana Highway 35 and US Highway 2 (see Figure 1 below). The property can be legally described as Parcel A of Certificate of Survey # 15472 (aka Assessor's Tract 3P) in NW Quarter, Section 3, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**Figure 1:** Subject property highlighted in yellow.



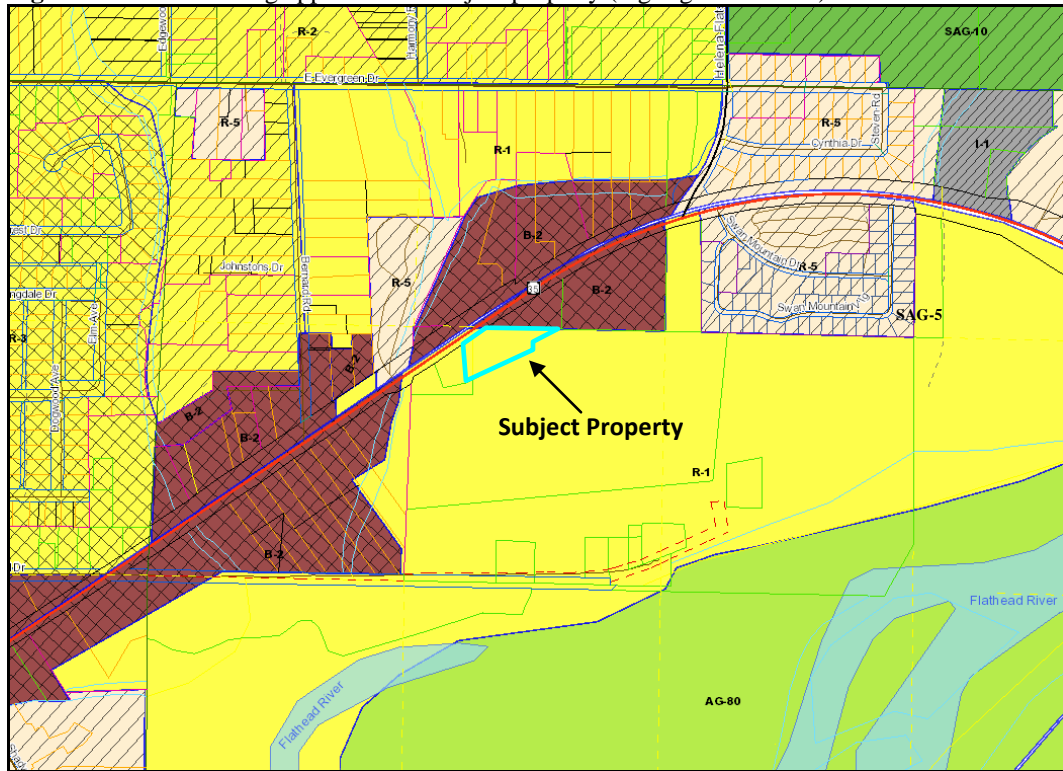
## C. Proposed Zoning Map Amendment

The subject property is located within the Willow Glen Zoning District and is currently zoned 'R-1 Suburban Residential' (see Figure 2 below). 'R-1 Suburban Residential' is defined in Section 3.09.010 Flathead County Zoning Regulations (FCZR) as a district *"to provide estate-type development. These areas would normally be located in rural areas away from concentrated urban development, typically not served by water or sewer services, or in areas where it is desirable to permit only low-density development (e.g., extreme topography, areas adjacent to floodplains, airport runway alignment extensions)."*

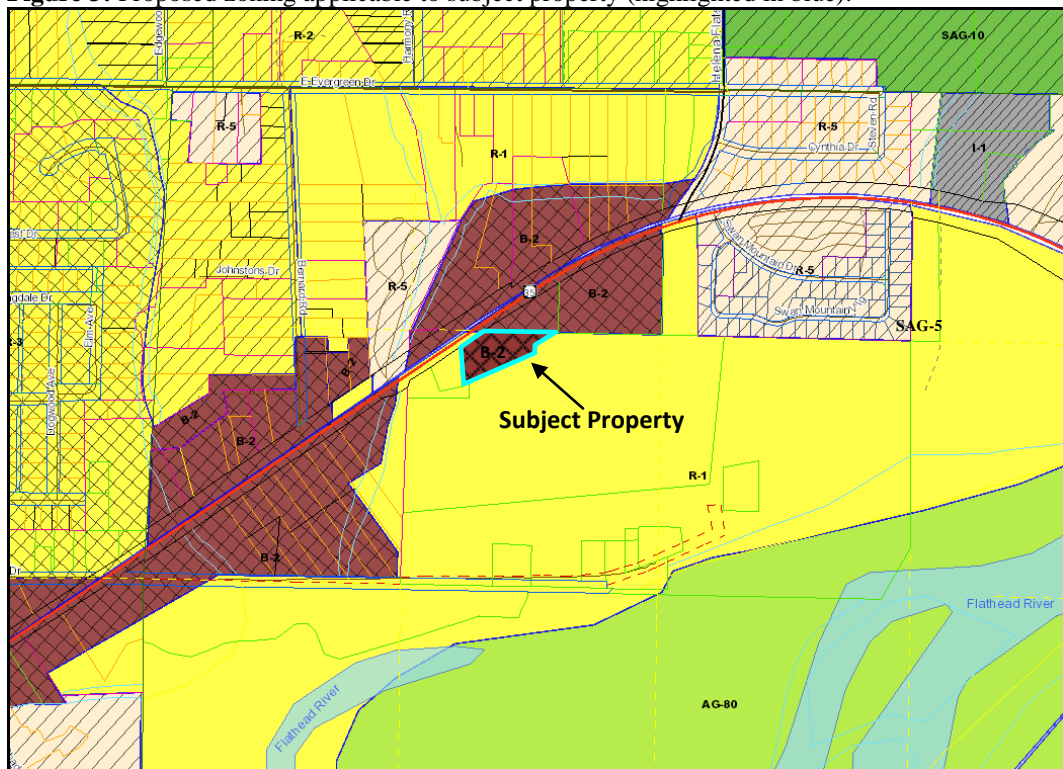
The applicant has requested the zoning map amendment to allow the property to be zoned 'B-2 General Business', with the amended zoning boundaries following the established property boundaries (see Figure 3 below). 'B-2 General Business' is defined in Section 3.17.010 FCZR as a business district *"to provide for those retail sales and service functions and operations that are typically characterized by outdoor display, storage, and/or sale of merchandise, by major repair of motor vehicles, and*

by outdoor commercial amusement and recreational activities. This district should also serve the general needs of the tourist and traveler”.

**Figure 2:** Current zoning applicable to subject property (highlighted in blue).



**Figure 3:** Proposed zoning applicable to subject property (highlighted in blue).

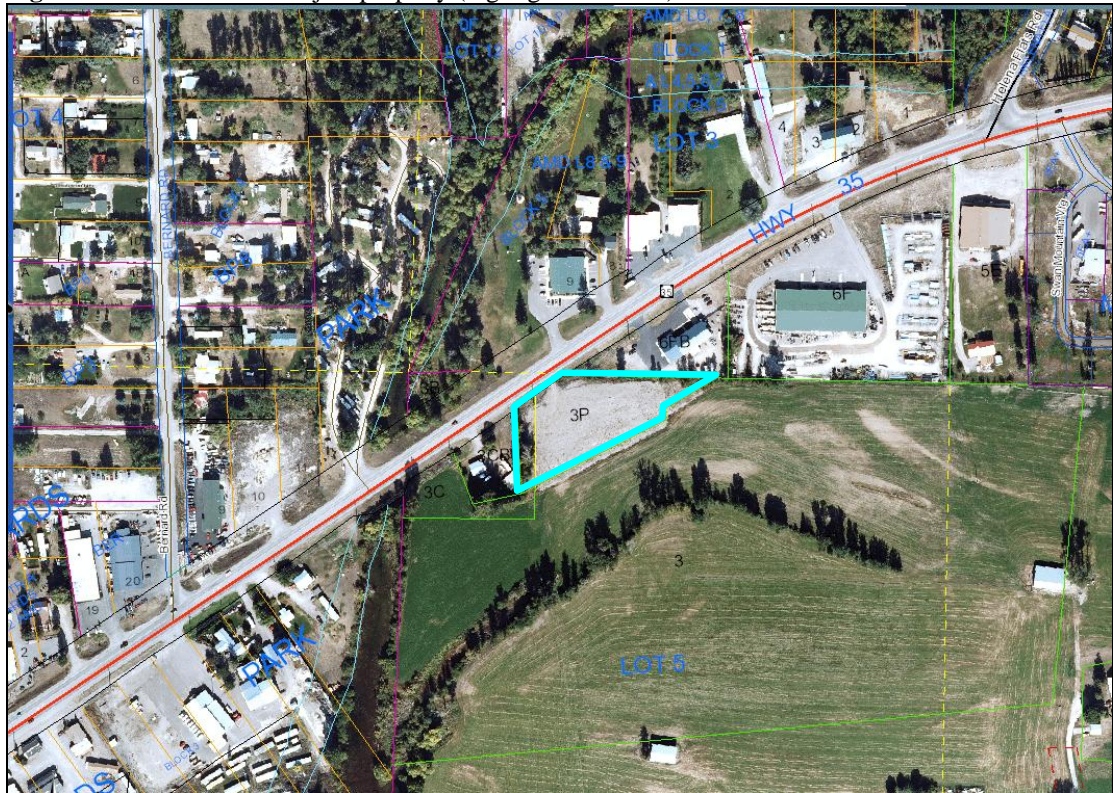




#### **D. General Character of and Reason for Amendment**

As shown in Figure 4, below, the site is situated between a residence to the west and commercial uses to the north and east, with agricultural lands abutting the southern boundaries of the subject property. The subject property is flat and open ground consisting of approximately 4-6 feet of fill which has been placed on the site in order to elevate the property surface above the Base Flood Elevation (BFE) of the 100-year floodplain, in preparation for potential future uses. The applicant is requesting the change in zoning in order to establish 'B-2 General Business' zoning on the property. As stated in the application, the applicant's reasoning for the amendment is that the property is surrounded by existing commercial enterprise, is adjacent to and across the highway from an existing B-2 zoning district, and the property is no longer suitable for residential use.

**Figure 4:** Aerial view of subject property (highlighted in blue).



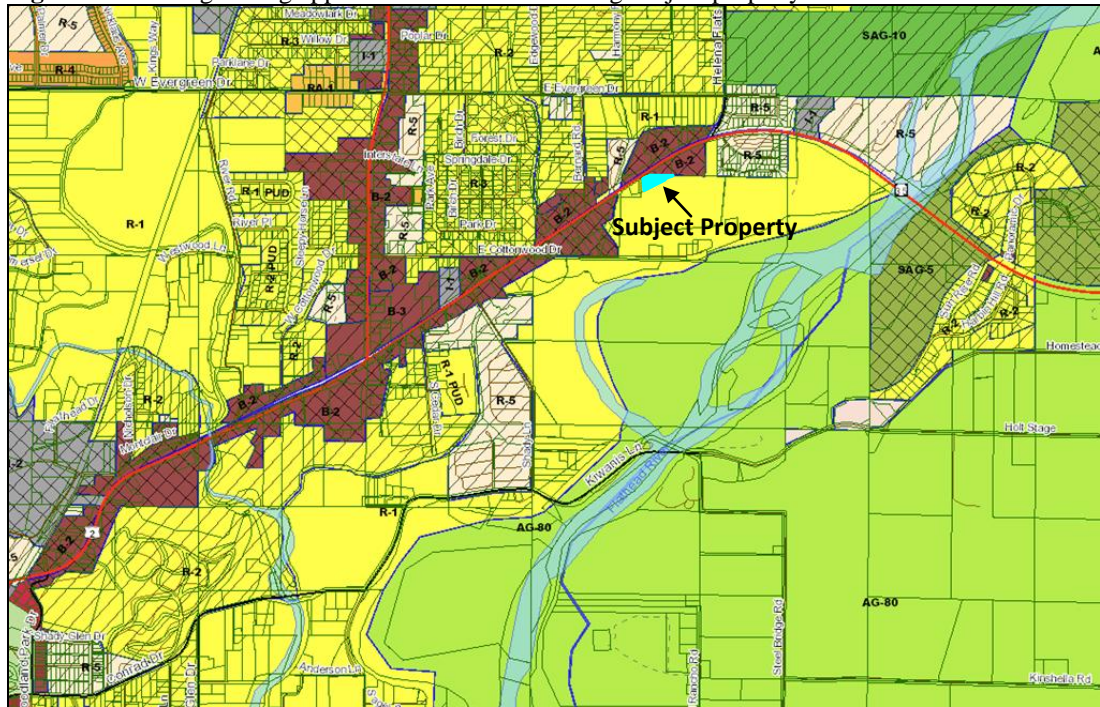
#### **E. Adjacent Zoning and Character of the Overall Zoning District**

The subject property is located within the Willow Glen Zoning District and is generally surrounded by residential and business zoning use designations (see Figures 2 and 5). Specifically, the property is bordered to the north and northwest by 'B-2 General Business' zoning and to the south, east, and west by 'R-1 Suburban Residential' zoning. The general vicinity of the subject property also has certain instances where 'R-5 Two Family Residential' zoning is established.

The area surrounding the subject property is developed with a combination of suburban residential, business/commercial, and agricultural uses. Lot sizes generally

range between one-half acre and two acres for properties fronting Highway 35, while neighboring agricultural lots exceed twenty acres in size. Neighboring parcels along the highway are currently developed for a number of different types of business and residential uses, and adjacent parcels to the south are low-lying cultivated fields. The mix of residential, business, and agricultural land uses is consistent with the established mixed zoning present in the general area.

**Figure 5:** Existing zoning applicable to area surrounding subject property.



It is important to note that the subject property is located within a ‘gap’ of R-1 zoning situated between areas of B-2 zoning along the south side of the highway. The requested zone change would only amend the zoning on the subject property, and a ‘gap’ of approximately 400 feet in length, comprised of three tracts of land, would continue to exist. Staff has not solicited the adjacent owner’s interests in amending their property’s zoning as the proposal is a *privately* initiated map amendment request.

When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a brief review of the three-part test in relation to this application.



1. *The zoning allows a use that differs significantly from the prevailing use in the area.*

With the exception of the ‘gap’ of R-1 zoning discussed above, both sides of Highway 35 are zoned B-2 and generally developed for commercial purposes in a continuous strip extending approximately 2.5 miles from Helena Flats Road to Woodland Park Drive as shown in Figure 5. Although the requested B-2 zone would allow business uses which differ greatly from uses currently allowed on the property under the existing R-1 zoning, adopting the zone change to B-2 would not allow uses on the property that differ significantly from the prevailing uses in the area.

2. *The zoning applies to a small area or benefits a small number of separate landowners.*

The zoning map amendment would apply to the 1.8-acre subject property currently under single ownership.

3. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.*

While the zoning map amendment would apply to one property for the benefit of a single owner, this zoning map amendment would not appear to be at the expense of the surrounding landowners or general public because the zoning would be changed to be the same as the prevalent zoning along the highway corridor.

In summary, the proposed zoning map amendment would not appear to be at risk of spot zoning because it doesn’t meet the three criteria established by legal precedent in the case of *Little v. Board of County Commissioners*, of which all three criteria must be met for the application to potentially be considered spot zoning.

#### **F. Public Services and Facilities**

Sewer:	Individual septic or connection to Evergreen public sewer system
Water:	Individual well or connection to Evergreen public water system
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Evergreen School District (K-8), Flathead High School
Fire:	Evergreen Fire District
Police:	Flathead County Sheriff’s Office

#### **G. Criteria Used for Evaluation of Proposed Amendment**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

## **H. Compliance With Public Notice Requirements**

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject properties on October 14, 2011. Legal notice of the Planning Board public hearing on this application will be published in the October 24, 2011 edition of the Daily Interlake.

Following the Planning Board hearing on November 9, 2011, public notice of the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the date, time and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

## **I. Agency Referrals**

Referrals were sent to the following agencies on September 13, 2011:

- Flathead County Public Works/Flathead County Road Department
  - Reason: The location of the zone change request is in close proximity to county roads, and the zone change request has the potential to impact County infrastructure, should development occur in the future.
- Flathead City-County Health Department; Environmental Health Services
  - Reason: Increased development as a result of the zoning map amendment may necessitate review by the Department.
- Flathead County Sheriff
  - Reason: Potential development resulting from the proposed zoning map amendment could have an impact on existing public services.
- Evergreen Fire District
  - Reason: The subject property is located within the jurisdiction of the local fire district and increased development as a result of the zoning map amendment could impact the level of service available.
- Flathead County Water and Sewer District No.1 Evergreen (hereafter referred to as Evergreen Water and Sewer District)
  - Reason: The subject property is located within the jurisdictional boundaries of the Water District and outside of RSID boundaries for public sewer service provided by the Sewer District in agreement with the City of Kalispell per an adopted interlocal agreement. Property development as a result of the zoning map amendment may necessitate connection to and use of district infrastructure.
- Montana Department of Transportation (MDT)
  - Reason: The subject property is adjacent to Montana Highway 35 and the zone change request has the potential to impact MDT infrastructure, should development occur in the future.
- City of Kalispell

- Reason: Because the subject property is located outside of RSID boundaries for public sewer service provided by the Sewer District in agreement with the City of Kalispell, consent from the City is required for connection to the public sewer service.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment will do so at the Planning Board public hearing scheduled for November 9<sup>th</sup>, 2011. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearings.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Dave Prunty, Director; Flathead County Road & Bridge Department
  - Comment: At this point the County Road Department does not have any comments on this request.
- Flathead County Water and Sewer District #1- Evergreen
  - Comment: The District can provide water service to the property. In order to provide sewer service, the District will require receipt of a letter of permission from the City of Kalispell as the property is outside of the District's service boundary as defined in the interlocal agreement between the City and the District.
- Sean Conrad, Senior Planner; Kalispell Planning Department
  - Comment: This office has no comment on the proposed zone change.

### **IV. EVALUATION OF PROPOSED AMENDMENT**

#### **A. Build Out Analysis**

Once a specific zoning designation is applied in a certain area, landowners have certain land uses that are allowed "by-right." A build-out analysis is performed to examine the maximum potential impacts of full build-out of those "by-right" uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not "best-case" or "worst case" scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zone change to the future of the community to allow for the best possible review.



### Current Zoning

The existing 'R-1 Suburban Residential' zoning is defined as a district *"to provide estate-type development. These areas would normally be located in rural areas away from concentrated urban development, typically not served by water or sewer services, or in areas where it is desirable to permit only low-density development (e.g., extreme topography, areas adjacent to floodplains, airport runway alignment extensions)"* (Section 3.09.010 FCZR).

The following uses are permitted in an R-1 zone:

1. Agricultural/horticultural/silvicultural uses.
2. Class A manufactured homes.
3. Day care homes.
4. Dwellings, single-family.
5. Guest houses.
6. Home occupations (See Chapter V- Performance Standards and Chapter VII – Definitions).
7. Homeowners parks and beaches.
8. Livestock (See Chapter V – Performance Standards).
9. Nurseries, landscaping materials.
10. Parks and publicly owned recreational facilities.
11. Produce stands.
12. Public transportation shelter stations.
13. Public utility service installations. (A minimum of five feet of landscaped area shall surround such building or structure.)
14. Stables, private.

The following uses are listed as conditional uses in an 'R-1 Suburban Residential' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Airfields.
2. Aircraft hangars when in association with properties within or adjoining and airport/landing field.\*
3. Bed and breakfast establishments.
4. Camp and retreat center (See Chapter IV – Conditional Use Standards and Chapter VII – Definitions).
5. Caretaker's facility.\*
6. Cellular antennas & monopoles.
7. Cemeteries, mausoleums, columbariums, crematoriums.
8. Churches and other places of worship.
9. Community center buildings operated by a non-profit agency.
10. Community residential facilities.\*\*
11. Dwellings, cluster development (See Chapter IV – Conditional Use Standards).
12. Dwellings, family hardship.\*
13. Electrical distribution stations.
14. Golf courses.
15. Golf driving ranges.
16. Manufactured home parks.
17. Radio and television broadcast stations.
18. Schools, primary and secondary.
19. Stables, public.

20. Temporary buildings or structures.\*
21. Water and sewage treatment plants.
22. Water storage facilities.

Bulk and dimensional standards under 'R-1 Suburban Residential' zoning require minimum setbacks of 20 feet from the front, side, rear and side-corner property boundaries for all principal structures, while setbacks for accessory structures require 20 foot setbacks from front and side-corner property boundaries and 5 foot setbacks from side and rear property boundaries. Additional setbacks of 20 feet are required from streams, rivers and unprotected lakes that do not serve as property boundaries, and from county roads classified as collector or major/minor arterials. The minimum lot area is 1 acre, the maximum allowable building height is 35 feet for all structures when principal structure setbacks are met, and the permitted lot coverage is 40%. Under the existing zoning, the 1.8 acre subject property could not be divided but appears able to adequately accommodate those uses allowable in the R-1 zone.

#### Proposed Zoning

The proposed zoning map amendment would change the zoning on the subject property from 'R-1 Suburban Residential' to 'B-2 General Business', defined as "*A business district to provide for those retail sales and service functions and operations that are typically characterized by outdoor display, storage, and/or sale of merchandise, by major repair of motor vehicles, and by outdoor commercial amusement and recreational activities. This district should also serve the general needs of the tourist and traveler*" (Section 3.17.010 FCZR). The following is a list of permitted uses in a B-2 zone:

1. Accessory apartments.
2. Art foundries.
3. Automobile (new and used) and accessory sales.
4. Automobile service stations.
5. Boat sales, new and used.
6. Bus stations.
7. Car washes.
8. Cellular towers.
9. Churches and other places of worship.
10. Day care centers.
11. Farm equipment sales.
12. Financial institutions.
13. Food stores, supermarkets, and delicatessens.
14. Health clubs.
15. Hotels, motels.
16. Lodges and fraternal and social organizations, provided that any such establishment shall not be conducted primarily for gain.
17. Lumber yards, building materials; storage and sales.
18. Manufactured home sales and storage.
19. Nurseries, landscaping materials.
20. Offices.
21. Parks and publicly owned recreational facilities.
22. Public transportation shelter stations.

23. Public utility service installations. (A minimum of five feet of landscaped area shall surround such building or structure.)
24. Quasi-public buildings. (fire stations, government offices, etc.)
25. Radio and television broadcast stations.
26. Recreational facilities, high-impact.
27. Recreational facilities, low-impact.
28. Recreational vehicle parks.
29. Recycling drop-off stations.
30. Rental yards.
31. Retail sales and services.
32. Restaurants.
33. Theaters, housed in permanent indoor structures.
34. Repair of equipment and consumer items such as appliances, clocks and watches, lawn and garden equipment, computers, televisions, shoes, and furniture in an enclosed facility.

The following uses are listed as conditional uses in a B-2 zone; an asterisk designates conditional uses that may be reviewed administratively:

1. Animal hospitals, veterinary clinics.
2. Automobile repair shops.
3. Colleges, business schools, trade schools, music conservatories, dance schools.
4. Commercial caretaker's facility in a detached accessory building in conjunction with a business.\*
5. Commercial recreation areas.
6. Convention hall facilities.
7. Electrical distribution stations.
8. Golf driving ranges and putting courses.
9. Mini-storage, RV storage.
10. Mortuaries.
11. Taverns.
12. Temporary buildings or structures.\*
13. Water storage facilities.

The bulk and dimensional standards under B-2 zoning require minimum setbacks of 20 feet from the front, 5 feet from the side, and 15 feet from the rear property boundaries for all structures. The front setback requirement for property abutting US Highway 35 would be 30 feet because the highway is classified as a major arterial. The minimum lot area is 7,500 ft<sup>2</sup>, minimum lot width is 50 feet, the maximum allowable building height is 35 feet for all structures, and there is no limitation on permitted lot coverage.

Under the proposed B-2 zoning, the 1.8 acre (78,408 ft<sup>2</sup>) subject property could potentially be divided to create five to seven lots, with each lot presumably containing one business use (assuming approximately 30% of the lot area would be necessary to accommodate access, parking, and utilities). As the applicant has requested the zone change with no specific proposed use, potential vehicle traffic trips associated with the proposed zone change are not able to be reasonably estimated, although it can be assumed that an increase in commercial development/use on the subject property

would be accompanied by an increase in vehicular traffic. The potential maximum intensity of use would be limited by spatial constraints such as applicable minimum lot width and setbacks, requirements for access and parking, and provisions for water and sanitation needs.

In summary:

- The zone change request would presumably increase the intensity of use on the subject property, as the site is currently undeveloped and B-2 zoning would offer a wide range of potential new commercial uses;
- While the map amendment would introduce potential uses that differ from uses currently allowed on the property and on directly adjacent properties to the south and west, potential uses would be consistent and compatible with existing uses on adjacent properties to the east and north which are already zoned B-2;
- The subject property could be developed with uses and structures in a manner which could comply with the bulk and dimensional requirements applicable to the 'B-2 General Business' zone; and
- Impacts resulting from a hypothetical maximum build-out estimation appear minimal and acceptable given the character and intent of the proposed B-2 zoning relative to the character of uses established on adjacent properties situated along the highway and in the vicinity of the proposal.

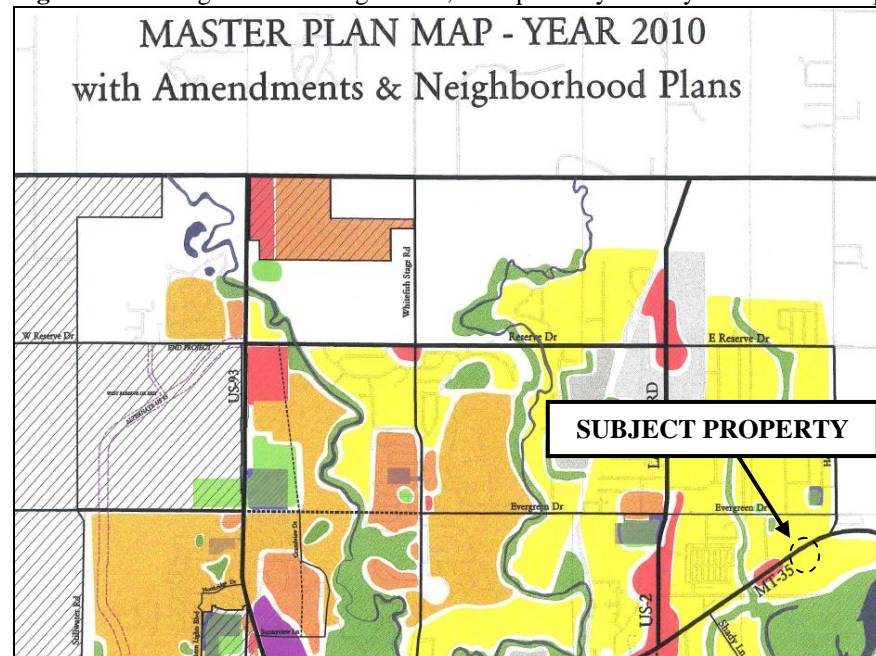


**B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)**

**i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Kalispell City-county Master Plan Year 2010, adopted by Flathead County on February 6, 1986 by Resolution #578A. The Master Plan was then incorporated as an addendum to the Growth Policy upon its adoption March 19, 2007 through Resolution #2015A (see Table 10.1 of the Flathead County Growth Policy).

**Figure 6:** Existing land use designations; Kalispell City-County Master Plan Map

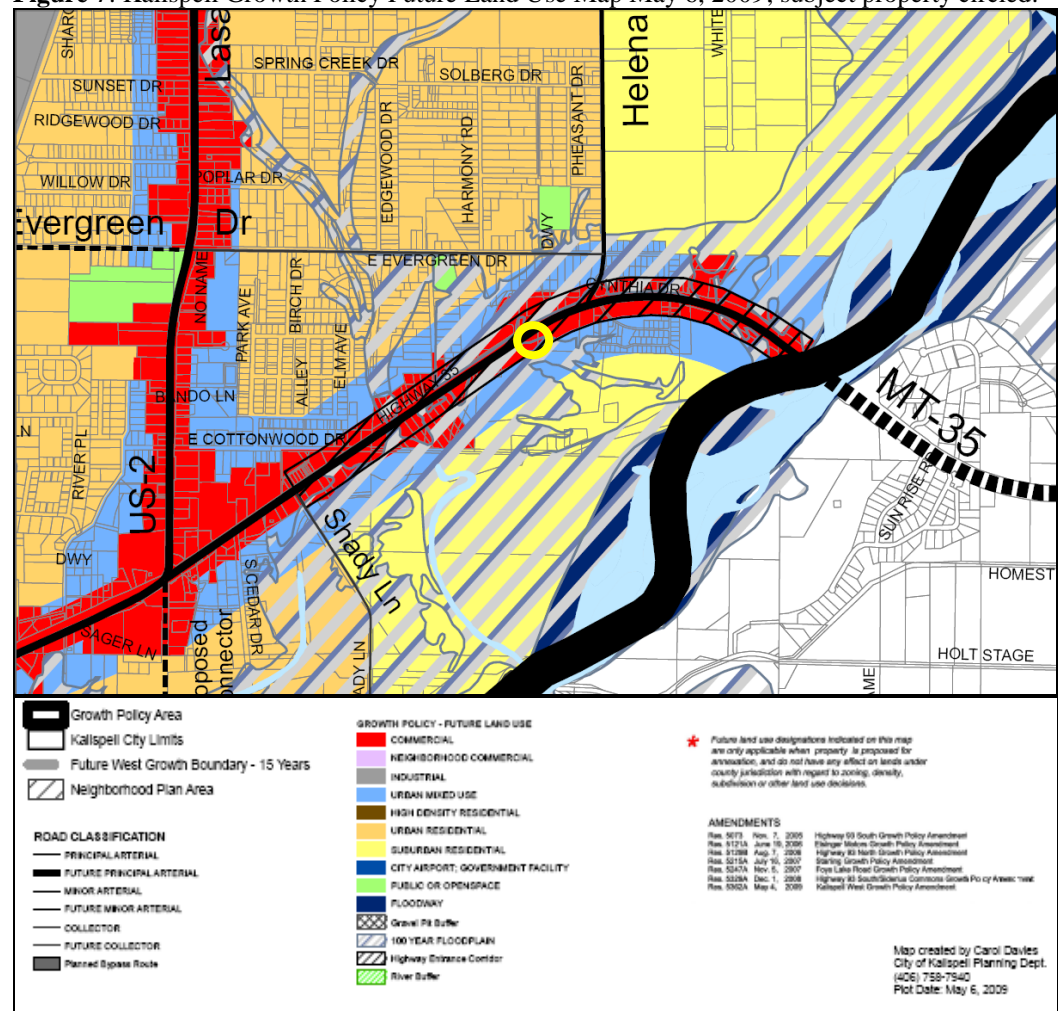


As seen in Figure 6 above, the designated land use map identifies the subject property as “Suburban Residential”, a land use designation described in the Master Plan as: *“A residential district which provides for two or less units per acre. Such areas typically do not have access to a community sewer or water system, have only limited police and fire protection, may have limited carrying capacity due to site or soil limitations, floodplain or other natural constraints which preclude higher density. Suburban residential districts are typically located in two areas: on the periphery of the urbanizing community where they serve as a transitional development pattern between the urban area and the timber and agricultural areas beyond; and in aesthetically attractive areas such as foothills, lakeshore, or river frontage not suitable for agriculture or timber production. Suburban residential districts provide large lot, estate, ranchette or resort housing opportunities where limited farming/gardening and raising of animals is common and/or privacy, aesthetic consideration and preservation of natural surroundings are paramount. Detached single family houses and*

manufactured homes on individual lots would constitute the major land use pattern.”

The site is able to be served by public water and sewer, is generally absent of environmental constraints, and is adjacent to a principal arterial roadway maintained by the state Department of Transportation. The vicinity of the subject property may be described as a transitional suburban area of the County, and the property is directly adjacent to Highway 35, which serves as the primary access corridor to Kalispell from the east. This corridor is mostly zoned B-2 General Business and prevalently developed with commercial uses in the proposal vicinity, as seen above in Figures 4 and 5. Although not formally adopted by Flathead County at the present time, the City of Kalispell adopted a revised Growth Policy Future Land Use Map in 2009 which designates the subject property as ‘Commercial’ as seen in Figure 7 below.

**Figure 7:** Kalispell Growth Policy Future Land Use Map May 6, 2009; subject property circled.



Although the proposed zoning map amendment is not compliant with the *Suburban Residential* designation of the adopted 'Kalispell City-County Master Plan Map 2010', the City-County Master Plan is unique in that it stresses the importance of all three major components – the plan text, designated land use map, and goals and objectives – when interpreting or implementing the document. The following goals and objectives, supplemented by text and found within the Master Plan document, appear to support the proposed zoning map amendment from R-1 to B-2, and have supported similar zoning map amendment requests in the area in the past:

### **Land Use**

*6.a Designate adequate areas for a variety of business and commercial uses such as neighborhood oriented businesses and services, highway-commercial oriented activities and general commercial uses.*

- The proposed zoning map amendment would establish the ability for the property to be used for highway-commercial oriented activities and general commercial uses.

*6.b. Set standards for the designation or expansion of commercial areas based on a compact development pattern designed to meet the needs of the intended service area and not the desires or speculation of strip developers.*

- Existing commercial development along Montana Highway 35 between the intersection of US Highway 93 and the intersection of US Highway 2 may be characterized as relatively compact strip development, and commercial development along Montana Highway 35 between the intersection of US Highway 2 and the crossing of the Flathead River may be characterized as less compact and sprawling commercial strip development consistent with the B-2 zoning which is prevalently established along that section of the highway corridor. As the subject property is located within a 'gap' of R-1 zoning situated between areas of B-2 zoning, the proposed zoning map amendment would accommodate the infill of commercial strip development at the proposal location, in contrast to expanding extent of the currently established elongated commercial corridor.

*6.g Maintain the character of the single-family neighborhood.*

- The subject property is currently undeveloped, and it is unlikely the property would ever be developed for residential use in the future. The character of the Montana Highway 35 corridor between U.S. Highway 2 and the Flathead River has been transitioning from single-family residential uses over time, and will likely continue to do so as growth and development pressures continue to impact this area of the County.

*6.f Establish standards for buffering incompatible land uses and for mitigating impacts caused by such arrangements.*

- Section 5.05 of the Zoning Regulations currently requires fencing or greenbelts/vegetative buffers between areas zoned for residential and

commercial use; should the proposed zoning map amendment be approved, these standards would be applicable to the subject property where it currently abuts adjacent R-1 zoning.

### **Transportation**

*7.g Require off-street parking to meet the needs of new construction.*

- As the subject property is currently undeveloped and is not irregularly shaped, it is anticipated future commercial development would have adequate space to accommodate required off-street parking, pursuant to applicable parking and loading requirements found in Chapter 6 of the Zoning Regulations.

### **Public Facilities**

*8.a Designate areas of future development which are already serviced or are in areas which can be economically serviced by water and sewer systems, police and fire protection, etc.*

*8.b Coordinate sewer, water and street planning and development with the land development process.*

- The vicinity of the subject property is currently served by public facilities and infrastructure necessary to accommodate commercial use. While the subject property is located outside the service boundary of the Evergreen Water and Sewer District, the District has indicated water and sewer mains are currently situated in close proximity, and connections to public water and sewer services are available, subject to procedures outlined in an interlocal agreement with the City of Kalispell.

### **Flathead County Growth Policy**

The adoption of the Kalispell City County Master Plan 2010 as an addendum to the Flathead County Growth Policy ensured the Plan, as originally adopted, was consistent with the 2007 Growth Policy pursuant to G.45 and P.45.1 found in Chapter 10. Specific goals and policies related to land use, transportation, public facilities and services, natural resources, demographics, housing and the Flathead economy correspond to goals and objectives identified in the Kalispell City County Master Plan 2010 and discussed above. Simply mirroring the zoning established at the time the Growth Policy was adopted, the Growth Policy Designated Land Use Map shows the subject property as ‘Residential’ between areas shown as ‘Commercial’. While the proposed zoning map amendment doesn’t comply with the ‘Residential’ land use designation, several Growth Policy goals and policies appear to support the proposed zoning map amendment:

*G.6 Adequate commercial land that is safely accessible and efficiently serviceable.*

*P.6.2 Restrict commercial development in unsafe, inaccessible, remote rural areas.*

*P.6.3 Provide ample commercial land designation to promote affordability.*



*P.6.5 Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the County.*

*G.7 Consider existing community character in commercial land development.*

*P.7.4 Identify existing areas that are suitable for impact-mitigated commercial uses.*

*P.21.1 Provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or businesses relocation to Flathead County.*

*G.23 Maintain safe and efficient traffic flow and mobility on county roadways.*

*P.34.3 Promote land use patterns that permit logical, predictable and effective extension and integration of utilities.*

- The proposed zone change appears supported by the text of the Master Plan in that the site proposed for B-2 General Business zoning is in an already established urban area and the potential increased commercial activity would be directed toward an existing commercial area as infill development.
- Public facilities and utilities exist in close proximity to the subject property, are able to serve the subject property, and can adequately accommodate commercial uses in the future.
- The proposed zoning map amendment would result in additional land being designated for commercial use in an urbanized area of the County, adjacent to existing commercial land uses and accessible from Montana Highway 35, a principal arterial road maintained by the Montana Department of Transportation.
- The overall character of the area would support the proposed amendment because the subject property is adjacent to commercial zoning, as well as commercial and industrial uses, and because the subject property is suitable for the type and scale of development that may result from the proposed zone change request.
- The proposed zoning map amendment is located in an area of the County served by public utilities, an adequate transportation network and is in close proximity to the City of Kalispell and community of Evergreen, both areas of high population density. The map amendment would increase the acreage available for future commercial development and encourage infill.

**Finding #1** - While the proposed zoning map amendment is not explicitly compliant with the *Suburban Residential* designation on the *Kalispell City-County Master Plan Map - Year 2010*, the proposal substantially complies with the *Kalispell City-County Master Plan Year 2010* because it is supported by numerous goals and policies regarding commercial and residential land uses, and the location of the proposed zoning map amendment is adjacent to an area

designated as Commercial on the *Kalispell City-County Master Plan Map - Year 2010*.

**Finding #2** - While the proposal doesn't comply with the 'Residential' land use designation identified by the Designated Land Use Map, the proposed zoning map amendment is supported by the Flathead County Growth Policy because numerous applicable goals, policies and text appear to generally support the request, and because the proposed amendment substantially complies with the Kalispell City-County Master Plan Year 2010 which was adopted as an addendum to the Growth Policy of the Growth Policy.

**ii. Whether the proposed map amendment is designed to:**

**1. Secure safety from fire and other dangers;**

The subject property requesting the zoning map amendment has direct access onto Montana Highway 35, a principal arterial road maintained by the Montana Department of Transportation. The location is within the Evergreen Fire District, and the nearest fire and emergency response center is located approximately two road-miles northwest on LaSalle Road (US Highway 2). The property is currently served and would continue to be served by the Flathead County Sheriff's Department.

The site is currently mapped as being located within Special Flood Hazard Area (aka 100-year floodplain), as delineated on FEMA FIRM Panel 300029C1810G. A floodplain development permit was previously issued for placement of fill on the property, however it does not appear the floodplain designation of the property has been amended or revised by FEMA. It is assumed the property can be safely developed for future uses because future development is subject to compliance with the applicable Flathead County Floodplain and Floodway Management Regulations which have been adopted for the purpose of promoting the public health, safety, and general welfare.

**Finding #3-** The proposed map amendment would secure safety from fire and other dangers because the subject property may be accessed using adequate public infrastructure able to accommodate emergency vehicles safely and efficiently, the property is located within the Evergreen Fire District and the jurisdiction of the Flathead County Sheriff, both of whom would be able to provide an adequate level of service in the event of a fire or medical emergency, and because future development is subject to compliance with applicable floodplain regulations adopted for the purpose of promoting the public health, safety, and general welfare.

**2. Promote public health, public safety, and general welfare;**

The subject property is accessed from Montana Highway 35, a principal arterial road maintained by the Montana Department of Transportation. The property is located within a rural fire district providing fire and emergency medical services. No increase in fire hazard is anticipated because commercial structures require compliance with the state's established building standards

for fire safety, and new or expanded uses on the properties would be required to comply with applicable standards for safe vehicular ingress/egress. The property appears able to be served by public water and sewer systems of the Evergreen Water and Sewer District. In the event the amendment is approved, new or expanded uses would be served by the public road, fire district, and permitted means for water and sanitation. In the case of a subsequent division of the property, Montana Department of Transportation (MDT) review of the approach accessing onto Montana Highway 35 would be required, further ensuring public health and safety.

**Finding #4** – A zoning map amendment on the subject property from R-1 to B-2 would not adversely impact public health, safety and general welfare because future allowable development could be adequately served by public water and sewer facilities, the location is served by the Evergreen Fire District, and the approaches onto Montana Highway 35 would require compliance with applicable Montana Department of Transportation standards in the event of future division of the property.

**3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

Transportation

The subject property has legal and direct access onto Montana Highway 35, a paved state highway that accommodates existing traffic and is assumed to be able to accommodate an increase in vehicle traffic that may result from the proposed map amendment. There is no driveway yet established on the property, and it is unclear whether MDT has issued an approach permit for the property in the past. It is anticipated the approach onto the highway would be reviewed and permitted by MDT, as applicable, when the property is developed for a particular use.

Water

The subject property is currently located within the service boundaries of the Evergreen Water District, and the District commented that connection to the public water service is readily available.

Sewerage

The subject property is currently located outside the service boundaries of the Evergreen Sewer District, and the District commented that connection to the public sewer service would require a letter of permission by the City of Kalispell, pursuant to provisions outlined in an Interlocal Agreement between the District and the City of Kalispell. The application contains copies of RSID # 132 and the Interlocal Agreement. Generally, the service boundaries of the Evergreen Sewer District are established pursuant to RSID # 132, and the requirements for providing sewer services to properties located outside of the RSID require consent from the City of Kalispell, which will be based upon whether or not system collection capacity exists for the estimated sewage demands of future proposed use(s).

As the property is currently mapped as 100-year floodplain, and the surface elevation of the property has previously been raised with the placement of 4-6 feet of fill (see Section ii.(1) above), it is anticipated that any future use developed on the property would necessitate connection to the public sewer service due to limitations and restrictions associated with the establishment of new septic systems in fill and within areas delineated as 100-year floodplain.

Schools, parks, and other public requirements

The property is located within the Evergreen School District, and the proposed map amendment is not anticipated to adversely impact area schools or the District because the requested 'B-2 General Business' zoning would not directly result in increased residential use, students, or demands on bussing. There are a multitude of public parks in proximity to the proposal site; however, parks and recreation don't have bearing on the commercial nature of the Montana Highway 35 corridor in the vicinity of the request.

**Finding #5** – Future connection of the subject property to available public sewer services of *Flathead County Water and Sewer District No.1 Evergreen* is subject to compliance with provisions outlined in an Interlocal Agreement between the District and the City of Kalispell.

**Finding #6** –

It appears the subject property has a reasonable capability to connect to and use the public water and sewer services provided by *Flathead County Water and Sewer District No.1 Evergreen* to serve the needs of future uses situated upon the property based upon 1) comments from the District and the City of Kalispell, 2) language contained in Section 3 of the Interlocal Agreement, and 3) the proximity and location of existing water and sewer infrastructure in relation to the location of the subject property.

**Finding #7** – The proposed zoning map amendment facilitates the adequate provision of transportation, water, sewer, schools and parks because the subject property has adequate access onto a paved public road, has the capability to use public water and sewer services, would not create new demands upon the local School District, and would not adversely impact local and state parks and recreation facilities in the area.

**iii. In evaluating the proposed map amendment, consideration shall be given to:**

**1. The reasonable provision of adequate light and air;**

The 1.8 acre is currently undeveloped, and the entire subject property would be zoned 'B-2-General Business'. While the proposed zoning map amendment has the potential to increase development density on the subject property, future uses and any additional lots created would be required to meet the bulk, dimensional, permitted lot coverage and minimum lot size requirements of the 'B-2-General Business' zoning classification which is intended to ensure there is adequate light and air, or 'space' maintained upon the subject property and between surrounding uses. Additionally, future development of the subject property would be subject to compliance with *Greenbelt* provisions outlined



in FCZR Section 5.05, which require either a 6-foot high view obscuring fence or dense hedge vegetation at least 6-feet high be established along common boundaries between adjacent 'B' Business and 'R' Residential zoning use districts; these required greenbelts are intended to maintain a sense of 'space' and visual separation between adjacent business and residential uses.

**Finding #8** - The proposed zoning map amendment would provide adequate light and air upon the subject property and between surrounding uses because future development would be required to meet the bulk, dimensional and permitted lot coverage requirements of 'B-2-General Business' zoning and would be required to comply with applicable *Greenbelt* provisions of the zoning regulations which are intended to maintain a sense of 'space' and visual separation between adjacent business and residential uses.

**2. The effect on motorized and non-motorized transportation systems;**

The subject property requesting the zoning map amendment has an unimproved approach onto Montana Highway 35, a paved 2-lane highway constructed with a center turn-lane. There is good sight distance in each direction for vehicle ingress/egress from the approach. Although solicited, MDT has provided no comment on the proposal, indicating no concern regarding the proposal's potential impact on the state highway.

There are no existing bike/pedestrian facilities located along Montana Highway 35 adjacent to the subject property or in the general area. Potential future development may result in development of a bike/pedestrian trail along Montana Highway 35 adjacent to the subject property, as that location is identified in the Flathead County Trails Plan as part of a 'Proposed Connector' pathway which would hypothetically connect Kalispell with other areas of the greater Flathead Valley.

**Finding #9** - The effects of the proposed map amendment on the motorized and non-motorized transportation systems will be minimal because the existing, undeveloped approach onto Montana Highway 35 has adequate sight distance to promote continued driver safety, higher intensity future use(s) resulting from the proposed zoning map amendment would likely require additional review(s) which would consider potential impacts to the transportation system based upon conditions which would be pertinent at that time in the future, and because there are no non-motorized transportation systems such as pedestrian/bicycle pathways in the immediate area to be impacted.

**3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

The proposal is located within an unincorporated area transitioning between urbanized, suburban residential, and agricultural uses located approximately two miles northeast of the annexed boundary of the City of Kalispell. The proposed zoning map amendment to B-2 zoning may result in a slight increase

in commercial intensity and density in the form of infill development within the existing commercially developed highway corridor of Montana Highway 35 between the City of Kalispell and the Flathead River. The proposal appears compatible with Kalispell's most recently revised Growth Policy Future Land Use Map, which designates the subject property as 'Commercial', and the proposal appears compatible with goals and policies adopted by the City of Kalispell in the Kalispell City-County Master Plan Year 2010, as the document acknowledges the highway oriented linear strip of commercial development east of Kalispell and promotes infill commercial development in existing commercial areas instead of expanding commercial development into agricultural and residential areas.

**Finding #10-** The proposed zoning map amendment would be compatible with orderly urban growth in the vicinity of Kalispell because Kalispell's most recently revised Growth Policy Future Land Use Map designates the subject property as 'Commercial', the map amendment would not result in an extension of commercial uses into a residential area, and the proposal would be an instance of efficient infill of commercial development in an area of existing B-2 General Business zoning and B-2 compliant commercial uses.

**4. The character of the district(s) and its peculiar suitability for particular uses;**

The property is currently undeveloped and has no apparent physical constraints with the exception that it is currently delineated as being within 100-year floodplain, requiring compliance of future development with applicable floodplain regulations. Therefore, it is assumed the property could be developed in full compliance with the bulk and dimensional requirements applicable within a 'B-2 General Business' zoning use district. The subject property proposed for the B-2 zoning use district appears suitable for commercial uses because it fronts a commercially developed highway corridor, would be adjacent to and in close proximity to properties already zoned B-2 and developed accordingly, and has the capability to connect to public water and sewer services to serve the future use(s) on the property. B-2 zoned properties adjacent to and in close proximity to the subject property are developed with commercial uses appearing to have equal or higher intensity than the subject property would have in terms of lot coverage and vehicle traffic. Adjacent R-1 areas would be buffered from non-compatible commercial elements through compliance with the greenbelt provisions applicable to a B-2 zone abutting an R-1 zone per FCZR Section 5.05.

**Finding #11 –** The proposed zoning map amendment would be suitable for the subject property because the permitted uses and general characteristics of the proposed zoning designation are the same as the existing 'B-2 General Business' zoning on adjacent properties, typical of existing uses prevalently implemented in the surrounding area, and the character of the district would not change in response to development afforded by the requested zoning map amendment.

**5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The property requesting this zoning map amendment is currently undeveloped with no structures existing on-site. The proposed 'B-2 General Business' zoning designation is not anticipated to adversely affect the value of buildings and improvements on adjacent properties because the immediate area is already substantially developed with commercial structures and uses, and new development on the subject property would be required to comply with the bulk and dimensional requirements applicable within a 'B-2 General Business' zoning use district.

**Finding #12** – The zoning map amendment would conserve the value of buildings and encourage the appropriate use of land throughout the jurisdiction by allowing general business uses to occur on a property with highway frontage in a location where such land uses are established and prevalent.

**iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

The nearest municipality (2 miles distant from the subject property) is the City of Kalispell, which is a separate jurisdiction from the County and governed by a separate set of zoning regulations. As discussed above, the map amendment is in accord with Kalispell's most recently revised Growth Policy Future Land Use Map, as the map designates the area of the subject property as 'Commercial'. The proposal would establish B-2 General Business zoning on the subject property in a manner in which it would join an existing B-2 zoning use district which extends westward from the proposal location to a point of intersection with the jurisdictional boundary of the City of Kalispell, where the city's applicable zoning is also B-2 (refer to Figure 5).

**Finding #13** – The zoning regulations of the proposed map amendment would be compatible with the zoning ordinances of the City of Kalispell because the B-2 zoning use district extends westward from the proposal location to a point where it abuts the City's jurisdiction at a location similarly zoned B-2 by the City of Kalispell, and because the City's most current Growth Policy contemplates commercial designation and use in the location of the subject property.

**V. SUMMARY OF FINDINGS**

1. While the proposed zoning map amendment is not explicitly compliant with the *Suburban Residential* designation on the *Kalispell City-County Master Plan Map - Year 2010*, the proposal substantially complies with the *Kalispell City-County Master Plan Year 2010* because it is supported by numerous goals and policies regarding commercial and residential land uses, and the location of the proposed zoning map amendment is adjacent to an area designated as Commercial on the *Kalispell City-County Master Plan Map - Year 2010*.

2. While the proposal doesn't comply with the 'Residential' land use designation identified by the Designated Land Use Map, the proposed zoning map amendment is supported by the Flathead County Growth Policy because numerous applicable goals, policies and text appear to generally support the request, and because the proposed amendment substantially complies with the Kalispell City-County Master Plan Year 2010 which was adopted as an addendum to the Growth Policy of the Growth Policy.
3. The proposed map amendment would secure safety from fire and other dangers because the subject property may be accessed using adequate public infrastructure able to accommodate emergency vehicles safely and efficiently, the property is located within the Evergreen Fire District and the jurisdiction of the Flathead County Sheriff, both of whom would be able to provide an adequate level of service in the event of a fire or medical emergency, and because future development is subject to compliance with applicable floodplain regulations adopted for the purpose of promoting the public health, safety, and general welfare.
4. A zoning map amendment on the subject property from R-1 to B-2 would not adversely impact public health, safety and general welfare because future allowable development could be adequately served by public water and sewer facilities, the location is served by the Evergreen Fire District, and the approaches onto Montana Highway 35 would require compliance with applicable Montana Department of Transportation standards in the event of future division of the property.
5. Future connection of the subject property to available public sewer services of *Flathead County Water and Sewer District No.1 Evergreen* is subject to compliance with provisions outlined in an Interlocal Agreement between the District and the City of Kalispell.
6. It appears the subject property has a reasonable capability to connect to and use the public water and sewer services provided by *Flathead County Water and Sewer District No.1 Evergreen* to serve the needs of future uses situated upon the property based upon 1) comments from the District and the City of Kalispell, 2) language contained in Section 3 of the Interlocal Agreement, and 3) the proximity and location of existing water and sewer infrastructure in relation to the location of the subject property.
7. The proposed zoning map amendment facilitates the adequate provision of transportation, water, sewer, schools and parks because the subject property has adequate access onto a paved public road, has the capability to use public water and sewer services, would not create new demands upon the local School District, and would not adversely impact local and state parks and recreation facilities in the area.
8. The proposed zoning map amendment would provide adequate light and air upon the subject property and between surrounding uses because future development would be required to meet the bulk, dimensional and permitted lot coverage requirements of 'B-2-General Business' zoning and would be required to comply with applicable 'Greenbelt' provisions of the zoning regulations which are intended to maintain a sense of space and visual separation between adjacent business and residential uses.

9. The effects of the proposed map amendment on the motorized and non-motorized transportation systems will be minimal because the existing, undeveloped approach onto Montana Highway 35 has adequate sight distance to promote continued driver safety, higher intensity future use(s) resulting from the proposed zoning map amendment would likely require additional review(s) which would consider potential impacts to the transportation system based upon conditions which would be pertinent at that time in the future, and because there are no non-motorized transportation systems such as pedestrian/bicycle pathways in the immediate area to be impacted.
10. The proposed zoning map amendment would be compatible with orderly urban growth in the vicinity of Kalispell because Kalispell's most recently revised Growth Policy Future Land Use Map designates the subject property as 'Commercial', the map amendment would not result in an extension of commercial uses into a residential area, and the proposal would be an instance of efficient infill of commercial development in an area of existing B-2 General Business zoning and B-2 compliant commercial uses.
11. The proposed zoning map amendment would be suitable for the subject property because the permitted uses and general characteristics of the proposed zoning designation are the same as the existing 'B-2 General Business' zoning on adjacent properties, typical of existing uses prevalently implemented in the surrounding area, and the character of the district would not change in response to development afforded by the requested zoning map amendment.
12. The zoning map amendment would conserve the value of buildings and encourage the appropriate use of land throughout the jurisdiction by allowing general business uses to occur on a property with highway frontage in a location where such land uses are established and prevalent.
13. The zoning regulations of the proposed map amendment would be compatible with the zoning ordinances of the City of Kalispell because the B-2 zoning use district extends westward from the proposal location to a point where it abuts the City's jurisdiction at a location similarly zoned B-2 by the City of Kalispell, and because the City's most current Growth Policy contemplates commercial designation and use in the location of the subject property.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the thirteen Findings of Fact cited above.